

## EXHIBIT F

FENNEMORE CRAIG, P.C.  
William G. Klain (No. 015851)  
Zachary Rosenberg (No. 033719)  
2394 E. Camelback Road, Suite 600  
Phoenix, Arizona 85016  
Telephone: (602) 916-5000  
Email: wklain@fennemorelaw.com  
Email: zrosenberg@fennemorelaw.com

RUSSELL PICCOLI PLC  
Russell Piccoli  
2646 E. Juniper Avenue  
Phoenix, AZ 85032  
Telephone: (602) 381-0600  
Email: rp@winazlaw.com

Attorneys for Respondent

AMERICAN ARBITRATION ASSOCIATION

William H. Henrich, as Trustee of Insys  
Liquidation Trust,

Claimant,

v.

Michael L. Babich,

Respondent.

No. 01-23-0005-6852

**ANSWER AND COUNTERCLAIM**

**ANSWER/GENERAL DENIAL**

To the extent claimant has described his claims by a 106-page exhibit, encompassing 270 paragraphs in addition to his prayer for relief, such is violative of AAA Employment Rule 4(b)(i)(1), requiring a “brief statement of the nature of the claim.” As such, respondent generally denies all substantive allegations made with respect to him in claimant’s Exhibit 1.

**AFFIRMATIVE DEFENSES**

As and for affirmative defenses, respondent asserts release; estoppel; advice of counsel; that Insys suffered no net loss as, in the absence of the wrongful acts complained of, Insys would have never had any net worth or net assets to begin with, such that there is

1 no causation; that claimant wrongfully seeks indemnity or contribution in violation of  
2 Arizona law, and; *in pari delicto* as the actions of Insys by its chairman, key board members,  
3 and counsel were far more substantial than the effectively passive actions of respondent,  
4 which were only undertaken pursuant to all of their directions.

### 5 COUNTERCLAIM

6 At all times, Insys operated pursuant to the directions of its chairman, John Kapoor  
7 and its key director, Patrick Forteau, and at all times respondent operated only pursuant to  
8 their direction. In December 2013, Insys was served with a subpoena by the United States  
9 Department of Justice, alerting the company that some of its actions might be illegal. At  
10 that stage, Insys, through Kapoor, retained a major national law firm with expertise in FDA  
11 matters and the senior partner of Arizona's largest law firm as its General Counsel to guide  
12 its activities. Thereafter, through the time of respondent's forced departure from Insys in  
13 December 2015, Insys' counsel directed many of Insys' activities and consistently advised  
14 respondent that its actions were in compliance with law. Kapoor, Forteau, and Insys'  
15 counsel made such statements to respondent with the specific intent that respondent  
16 continue to provide administrative assistance to Insys' activities, but with knowledge that  
17 such activities were, or at least were likely, fraudulent.

18 At a minimum, Insys, through its outside and general counsel, failed to properly  
19 analyze and research the potential illegality of Insys' practices and communicate such to  
20 respondent. Consequently, even though respondent was not directly involved in  
21 implementing the speaker's program and had no direct involvement as to Insys' insurance  
22 reimbursement center, he continued to permit the activities complained of by claimant to  
23 proceed.

24 As a result, subsequent to the termination of his employment, respondent was  
25 indicted on various criminal counts in the United States District Court for the District of  
26 Massachusetts. Ultimately, respondent was effectively compelled to plead guilty to one  
27 count of mail fraud and one count of wire fraud, and was forced to spend time in a Federal  
28 penitentiary subsequent to his plea. Although as result of Insys' advice respondent believed

1 his actions were legal, his involvement in Insys' activities and criminal conviction have  
2 essentially made him unemployable. Insys is liable to respondent for negligence, fraud,  
3 and/or negligent misrepresentation. Insys' liability to respondent constitutes a set-off to  
4 any recovery claimant might realize in this proceeding.

5 **ATTORNEYS' FEES**

6 Respondent seeks an award of attorneys' fees pursuant to his paragraph 16 of the  
7 separation agreement and A.R.S. § 12-341.01.

8 DATED this 27th day of December, 2023.

9 FENNEMORE CRAIG, P.C.

10  
11 By: /s/ William G. Klain  
12 William G. Klain  
Zachary Rosenberg

13 RUSSELL PICCOLI, PLC

14  
15 By: /s/ Russell Piccoli  
16 Russell Piccoli

17 *Attorneys for Respondent*

18  
19 Copy sent to:

20 Daphne J. Crayne  
21 American Arbitration Association  
22 Manager of ADR Services  
45 E. River Park Place West, #308  
Fresno, CA 93720  
[daphnecrayne@adr.org](mailto:daphnecrayne@adr.org)

23 Eric D. Madden, Esq.  
24 Reid Collins & Tsai, LLP  
1601 Elm Street, Suite 4200  
25 Dallas, TX 75165  
[emadden@reidcollins.com](mailto:emadden@reidcollins.com)  
26 *Attorneys for Claimant*

27 By: /s/ Lisa Plisko  
28